



10-8-03

AF/34483

PTO/SB/21 (08-03)

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

| | | | |
|--|----------------------|------------------------|------|
| TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i> | Application Number | 10/051,003 | |
| | Filing Date | 01/18/2002 | |
| | First Named Inventor | Patrick C. Marks et al | |
| | Art Unit | 3748 | |
| | Examiner Name | Tu M. Nguyen | |
| Total Number of Pages in This Submission | 16 | Attorney Docket Number | 9319 |

| ENCLOSURES (Check all that apply) | | | |
|--|---|--|-----------------|
| <input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Documents(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ Remarks Certificate of Express Mailing Return Receipt Postcard | <input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): | Identify below: |

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | |
|-------------------------|-------------------|
| Firm or Individual name | William W. Habelt |
| Signature | |
| Date | October 7, 2003 |

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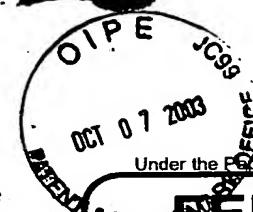
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FEET TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 330.00)

Complete if Known

| | |
|----------------------|------------------------|
| Application Number | 10/051,003 |
| Filing Date | 01/18/2002 |
| First Named Inventor | Patrick C. Marks et al |
| Examiner Name | Tu M. Nguyen |
| Art Unit | 3748 |
| Attorney Docket No. | 9319 |

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METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Order Other None
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FEE CALCULATION

1. BASIC FILING FEE

| Large Entity | Small Entity | Fee Description | Fee Paid |
|---------------------|---------------|------------------------|----------|
| Fee Code (\$) | Fee Code (\$) | | |
| 1001 770 | 2001 385 | Utility filing fee | |
| 1002 340 | 2002 170 | Design filing fee | |
| 1003 530 | 2003 265 | Plant filing fee | |
| 1004 770 | 2004 385 | Reissue filing fee | |
| 1005 160 | 2005 80 | Provisional filing fee | |
| SUBTOTAL (1) | | (\$ 0.00) | |

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

| Total Claims | Independent Claims | Multiple Dependent | Extra Claims | Fee from below | Fee Paid |
|--------------|--------------------|--------------------|--------------|----------------|----------|
| | | | | | |
| | | | -20** = | X | = |
| | | | - 3** = | X | = |
| | | | | | |

| Large Entity | Small Entity | Fee Description |
|---------------------|---------------|--|
| Fee Code (\$) | Fee Code (\$) | |
| 1202 18 | 2202 9 | Claims in excess of 20 |
| 1201 86 | 2201 43 | Independent claims in excess of 3 |
| 1203 290 | 2203 145 | Multiple dependent claim, if not paid |
| 1204 86 | 2204 43 | ** Reissue independent claims over original patent |
| 1205 18 | 2205 9 | ** Reissue claims in excess of 20 and over original patent |
| SUBTOTAL (2) | | (\$ 0.00) |

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

| Large Entity | Small Entity | Fee Description | Fee Paid |
|-----------------------------------|---------------|--|-------------|
| Fee Code (\$) | Fee Code (\$) | | |
| 1051 130 | 2051 65 | Surcharge - late filing fee or oath | |
| 1052 50 | 2052 25 | Surcharge - late provisional filing fee or cover sheet | |
| 1053 130 | 1053 130 | Non-English specification | |
| 1812 2,520 | 1812 2,520 | For filing a request for ex parte reexamination | |
| 1804 920* | 1804 920* | Requesting publication of SIR prior to Examiner action | |
| 1805 1,840* | 1805 1,840* | Requesting publication of SIR after Examiner action | |
| 1251 110 | 2251 55 | Extension for reply within first month | |
| 1252 420 | 2252 210 | Extension for reply within second month | |
| 1253 950 | 2253 475 | Extension for reply within third month | |
| 1254 1,480 | 2254 740 | Extension for reply within fourth month | |
| 1255 2,010 | 2255 1,005 | Extension for reply within fifth month | |
| 1401 330 | 2401 165 | Notice of Appeal | |
| 1402 330 | 2402 165 | Filing a brief in support of an appeal | 330.00 |
| 1403 290 | 2403 145 | Request for oral hearing | |
| 1451 1,510 | 1451 1,510 | Petition to institute a public use proceeding | |
| 1452 110 | 2452 55 | Petition to revive - unavoidable | |
| 1453 1,330 | 2453 665 | Petition to revive - unintentional | |
| 1501 1,330 | 2501 665 | Utility issue fee (or reissue) | |
| 1502 480 | 2502 240 | Design issue fee | |
| 1503 640 | 2503 320 | Plant issue fee | |
| 1460 130 | 1460 130 | Petitions to the Commissioner | |
| 1807 50 | 1807 50 | Processing fee under 37 CFR 1.17(q) | |
| 1806 180 | 1806 180 | Submission of Information Disclosure Stmt | |
| 8021 40 | 8021 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 770 | 2809 385 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 770 | 2810 385 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 1801 770 | 2801 385 | Request for Continued Examination (RCE) | |
| 1802 900 | 1802 900 | Request for expedited examination of a design application | |
| Other fee (specify) | | | |
| *Reduced by Basic Filing Fee Paid | | SUBTOTAL (3) | (\$ 330.00) |

(Complete if applicable)

| SUBMITTED BY | Registration No. (Attorney/Agent) | Telephone |
|-------------------|--------------------------------------|-----------------|
| Name (Print/Type) | William W. Habell | 315.433.4819 |
| Signature | | Date 10/07/2003 |

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On October 7, 2003

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Date of Signature: October 7, 2003

The following items of correspondence are being transmitted under this Certificate of Mailing re:

Applicant: Patrick C. Marks, et al
Serial No.: 10/051,003
Filed: January 18, 2002
Title: MULTIPLE FREQUENCY HELMHOLTZ RESONATOR

Transmittal Form – 1 page
Fee Transmittal – 2 pages (original and one copy)
Return Receipt Postcard
Reply Brief – 12 pages (4 page brief in triplicate)



Attorney Docket No. 9319

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#16
10-14-03

In re)
Application of) Examiner: TU M. NGUYEN
PATRICK C. MARKS ET AL.) Art Unit: 3748
Serial No.: 10/051,003) Docket No: 9319
Filed: JANUARY 18, 2002)
For: MULTIPLE FREQUENCY)
HELMHOLTZ RESONATOR)

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REPLY BRIEF

OCT 10 2003
TECHNOLOGY CENTER R3700

Syracuse, New York
October 2, 2003

Commissioner for Patents
Alexandria, Virginia 22313

Sir:

This is responsive to the Examiner's Answer.

In the Examiner's Answer in the second paragraph on page 7, the Examiner states that "(t)he phrase 'continuous' is defined in a dictionary as 'marked by uninterrupted extension in space, time or sequence'. Thus, in a view point of time (emphasis supplied), as shown in Figure 2, the closed chamber (9) in Jessberger defines a Helmholtz resonator which is continuously operatively connected to the inlet line (1) via a

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restricted connection (7) to reduce noise in the engine at all times (or for an uninterrupted extension of time), regardless if the connection (7) is open or closed." This interpretation of continuous gives no weight to "uninterrupted" as part of the recited definition and gives no weight to open or operative versus closed or inoperative relative to the functioning of the restricted connection for attenuation noise.

In claims 3, 7 and 9, there is a recitation of "a Helmholtz resonator continuously operatively connected to said inlet line via a restricted connection" and this is believed to positively recite a restricted connection that is continuously connected to the inlet line which equates to open. Claims 3 and 7 further recite "means for attenuating noise" which is further defined as "includ(ing) at least one restricted connection which is selectively connected between said chamber and said inlet line" and this is believed to positively recite a second restricted connection. Further, it is believed that the terms "continuously connected" and "selectively connected" are mutually exclusive and cannot apply to the same restricted connection. This interpretation is contested by the Examiner in the first full paragraph on page 8 of the Examiner's Answer. While the Examiner correctly states that "(i)n claim 3 or 7 of the pending application, there is only one means plus function limitation", it appears starting at line 6 of claims 3 and line 7 of claim 7. There is a positive recitation of structure prior to the positive recitation of the means plus function and the Examiner ignores this recitation of structure as being separate from the means plus function structure. Accordingly, the Examiner concludes that the means plus function recitation incorporates the previously positively recited structure stating that "(t)his limitation [the prior recited structure] recites 'a restricted connection which is selectively connected between the chamber and the inlet line.'"

The Examiner further correctly states in the first full paragraph on page 8 that "(t)he limitation that recited 'a restricted connection which is continuously operatively connected between the chamber and the inlet line' is not a means plus function limitation." Since it is just a pipe it is not believed to require, or justify, a means plus function recitation. The Examiner, however, concludes "(t)hus, based on the means plus

function limitations and because of the absence of the phrases 'first' and 'second' in these claims, the Examiner has determined that the limitations in claim 3 or 7 fail to specify two restricted connections for any embodiment in the pending application." The Examiner, states that "in the broadest reasonable interpretation of claims 3 and 7, the examiner has concluded that the restricted connection (7) in Jessberger is selectively, continuously, and operatively connected between the chamber (9) and the inlet line (1)." It is believed that this conclusion is clearly erroneous.

Claim 9 recites "a valve having only an open and a closed position" and in the last paragraph on page 9 of the Examiner's Answer, the Examiner argues that this is disclosed in Jessberger and states that "(a)s indicated on lines 10-13 of column 3, with regard to opening and closing of the restricted connections (7,8), the valve (10) in Jessberger has only an open and a closed position. This is further confirmed by analyzing Figure 3. As can be seen the design of valve (10) makes it impossible to either open or close both restricted connections (7, 8). The phrase 'or also both can be open or closed' on line 14 of column 3 clearly indicates a design feature of a different valve for a different embodiment because of the word 'or' at the beginning of the phrase."

The Examiner is clearly wrong on all of the conclusions with respect to valve 10. The valving action of valve 10 is only described in a single sentence at column 3 lines 10-14 which describes a single embodiment having four valving positions. With reference to Figure 3, rotation of valve 10, 30°, or so, in a clockwise direction or 60°, or so, in a counterclockwise direction would have both 5 and 6 open. Note the structure clockwise of the lead line for numeral 10 in Figure 3 and that patent drawings need not be drawn to scale. Rotation of valve 10 in a clockwise direction 150°-180°, or so, could block both 5 and 6.

In summary, it is believed that the claim language and reference have been misinterpreted and that claims 3, 7 and 9 are allowable over Jessberger.

Respectfully submitted,
PATRICK C. MARKS ET AL.



David J. Zobkiw
Reg. No: 26,627
Tele: (315) 433-4819
Fax: (315) 433-4075

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